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PEOSH Adopts the Hazard Communication Standard (N.J.A.C. 12:100-7)

The purpose of this bulletin is to inform public employers and employees that the federal Hazard Communication Standard, 29 CFR 1910.1200, has been adopted with amendments under the New Jersey Public Employees Occupational Safety and Health Act, at **N.J.A.C. 12:100-7**. The Standard overlaps with the New Jersey Worker and Community Right to Know (RTK) Act, N.J.A.C. 8:59, administered by the Department of Health and Senior Services Right to Know Program in the area of education and training of public employees. In order to prevent public employers from being subjected to two sets of rules regarding education and training, certain provisions of RTK education and training have been added to the Hazard Communication Standard and all education and training requirements are being removed from the RTK rules. This bulletin provides an overview of the Public Employees Occupational Safety and Health Program (PEOSH) Hazard Communication Standard (HCS) and explains the public employer's responsibilities under the Standard.

Background

On January 11, 2001, the US Department of Labor, Occupational Safety and Health Administration (OSHA) approved New Jersey as a State-Plan State for public employees only. In accordance with the federal OSHA-approved PEOSH State Plan, New Jersey must operate an occupational safety and health program that is at least as effective as the federal program. Therefore, the New Jersey Department of Labor (DOL), PEOSH Program, has adopted the Hazard Communication Standard (HCS) with amendments to bring New Jersey's regulatory requirements and standards in line with OSHA requirements.

PEOSH HCS and the Right to Know Act

OSHA adopted the federal Hazard Communication Standard in 1983, after the New Jersey Worker and Community Right to Know (RTK) Act had already been enacted. The public sector was not covered under the federal OSHA Standard, but was covered by the RTK Act. As a result of New Jersey's OSHA-approved State Plan and the adoption of the

Hazard Communication Standard by the PEOSH Program, public employers are now required to comply with both the PEOSH HCS and the RTK Act.

All references to RTK education and training are being removed from the RTK rules while certain provisions have been added to the federal Standard to create the PEOSH HCS. The New Jersey Department of Labor and Department of Health and Senior Services agreed to this change in order to eliminate confusion among public employers regarding the need to educate and train employees about hazards in the workplace. **Public employee training will now be solely enforced under the Hazard Communication Standard adopted by the PEOSH Program. The PEOSH HCS amendments are listed in the boxed area on the following page.** It is strongly recommended that you read the PEOSH HCS and Appendix E of the PEOSH HCS in its entirety to become familiar with all of the Standard's requirements.

***PEOSH Hazard Communication Standard
Summary of Amendments***

- N.J.A.C. 12:100-7.3 new definitions added: Hazardous Substance Fact Sheet (HSFS); RTK Hazardous Substance List (RTK HSL); RTK Survey; Technically Qualified Person; Workplace Hazardous Substance List; Workplace Survey
- N.J.A.C. 12:100-7.8(a) refresher training must be provided every two years, during regular working hours, and at no cost to employees
- N.J.A.C. 12:100-7.8(a) chemical specific information must be made available to employees through HSFSs
- N.J.A.C. 12:100-7.8(b)(3) employees must be informed of the location and availability of HSFSs, the RTK Survey, and the RTK HSL
- N.J.A.C. 12:100-7.8(c)(5) training must include an explanation of applicable provisions of the RTK Act (RTK Survey, RTK HSL, labeling, HSFS, central file, poster)
- N.J.A.C. 12:100-7.8(c)(6) a copy of the RTK brochure must be provided to employees
- N.J.A.C. 12:100-7.8(d) a “technically qualified person” must be used to conduct training
- N.J.A.C. 12:100-7.8(e) a list of the items to be included in training records
- N.J.A.C. 12:100-7.8(f) training records must be maintained
- N.J.A.C. 12:100-7.8(g) an employer is required to make available all training records
- N.J.A.C. 12:100-7.8(h) training materials must be appropriate in content and vocabulary to the educational level, literacy, and language of employees

Who is Covered?

The PEOSH HCS applies to all public employers and employees in New Jersey who use or store hazardous chemicals or products containing hazardous chemicals. A hazardous chemical is defined as a chemical which is a physical hazard or a health hazard (See N.J.A.C. 12:100-7.3). Refer to the PEOSH HCS for sources of information that are used to identify hazardous chemicals, N.J.A.C. 12:100-7.4, and those products to which the PEOSH HCS does not apply, N.J.A.C. 12:100-7.2(f).

Purpose of the Hazard Communication Standard

The purpose of the PEOSH HCS is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information regarding the hazards of the chemicals is passed on to employers and employees. Under the PEOSH HCS, communication of the hazards of chemicals is achieved through a comprehensive hazard communication program which includes:

- A written hazard communication program;
- Container labeling and other forms of warning;
- Use of Material Safety Data Sheets (MSDSs) and HSFSs; and
- Employee training.

The evaluation of chemical hazards is the responsibility of manufacturers and importers.

Employers who use hazardous chemicals must comply with the parts of the PEOSH HCS that require development and maintenance of a written hazard communication program and the communication of the hazard information to their workers.

Employers with Limited PEOSH HCS Coverage

Sealed container operations and laboratories have limited coverage under the PEOSH HCS. These limitations are explained below and are found in N.J.A.C. 12:100-7.2.

1. **Chemicals in sealed containers** - Employees who handle hazardous chemicals in sealed containers which are not opened under normal conditions of use, such as in warehouses and transportation facilities, are exempt from the full requirement of the Standard, but the employer is still required to:

- Ensure that labels are not defaced or removed from incoming containers;

- Obtain and maintain Material Safety Data Sheets (MSDSs) and make them readily accessible to employees in their work areas during each workshift; and
- Provide information and training for employees, except for the location and availability of the written hazard communication program, so they know how to protect themselves in the event of a chemical spill or leak from a sealed container.

2. **Laboratories** - Employers are required to perform only the following under the PEOSH HCS:

- Ensure that labels are not defaced or removed from incoming containers;
- Obtain and maintain Material Safety Data Sheets (MSDSs) and make them readily accessible to employees in their work areas during each workshift; and
- Provide information and training for laboratory employees in accordance with the PEOSH HCS, except for the location and availability of the written hazard communication program.

For laboratories covered under the Occupational Exposure to Hazardous Chemicals in Laboratories Standard, 29 CFR 1910.1450 (laboratories where chemical manipulations are carried out on a “laboratory scale,” multiple chemical procedures or chemicals are used, the procedures involved are not a part of a production process, and protective laboratory practices and equipment are available and in common use), the requirements of the PEOSH HCS are superseded. In this case the more specific Standard 29 CFR 1910.1450 applies. However, these laboratories are still required to comply with the provisions of the RTK Act.

Laboratory employers that ship hazardous chemicals are considered to be either chemical manufacturers or distributors. They must, therefore, ensure that any containers of hazardous substances leaving the laboratory are labeled as required by the PEOSH HCS, and that an MSDS is provided to distributors and other downstream employers as required by the PEOSH HCS.

Provisions of the PEOSH HCS

1. Chemical hazard evaluation
2. A written hazard communication program
3. Container labeling and other forms of hazard warning
4. Preparation, distribution, and maintenance of Material Safety Data Sheets (MSDSs)
5. Development and implementation of employee information and training programs
6. Trade Secrets

Each provision of the PEOSH HCS is summarized below. For a more detailed explanation of each provision, review a copy of the standard, N.J.A.C. 12:100-7, available from the PEOSH Program at the address listed on page 6. The standard may also be obtained from the website listed in the box below.

Note: The PEOSH Program has developed a document, “Public Employer’s Guide and Model Written Program for the Hazard Communication Standard,” to assist public employers in complying with the PEOSH HCS. A sample written program is included in this Guide. If you choose to use the model written program provided, it must be adapted to reflect policies and work practices at your specific workplace. To obtain a copy, visit our web site www.nj.gov/health/eoh/peoshweb, or call 609-984-1863.

Hazard Evaluation

Each hazardous chemical must be evaluated for its ability to cause adverse health effects and its potential to cause physical hazards, such as flammability, based on established criteria for defining a hazardous substance. Conducting this hazard evaluation is a responsibility of the producers, importers, and distributors of hazardous chemicals. This section may not apply to public employers unless you create or ship hazardous chemicals to others. **The majority of public employers will only need to focus on items 2-6 above under “Provisions of the PEOSH HCS.”**

Written Hazard Communication Program

All employers must develop and maintain a written hazard communication program at each workplace. The employer must describe in the program how the PEOSH HCS requirements for labeling, training, and MSDSs will be met. The written program must be made available upon request to employees, the employees' representative, the Commissioner of the New Jersey Department of Labor and the Commissioner of the New Jersey Department of Health and Senior Services or their designees. The written Program must contain, at a minimum:

1. A **list of hazardous chemicals** in the workplace;
2. A description of how employees will be **informed of the hazards of non-routine tasks and the hazards of chemicals contained in unlabeled pipes**;
3. **Information about the availability of MSDSs and HSFs** and methods to provide access to MSDSs and HSFs;
4. A description of **container labeling and other forms of warning**;
5. A description of the **employee training** program;
6. **Procedures for training** new employees initially, when new products are introduced, and for refresher training;
7. **Methods for providing hazard information** and protective measures to other employers on site who may be exposed.

A **list of hazardous chemicals** (List) must be compiled using the identity of the hazardous chemical or product that appears on the container and MSDS. The PEOSH HCS is a performance-based Standard. It allows the public employer flexibility in using existing lists of hazardous chemicals, such as the RTK Survey, to comply with the requirement to compile a list of hazardous chemicals. **The public employer has the option under the PEOSH HCS to develop a separate List to be included in the written Program or to use their RTK Survey as the List.**

The employer must be certain, however, that their RTK Survey contains all of the hazardous chemicals in the workplace if it is to be used as the required List. This would require them to have a complete

inventory RTK Survey. They can also attach a supplemental page to the RTK Survey listing any hazardous substances that may not be on their RTK Survey to comply with the PEOSH HCS.

HCS Labeling Requirement and Other Hazard Warnings

Products containing hazardous chemicals must be labeled to inform employers and employees of the hazards associated with the product or chemical. **Chemical manufacturers, importers, and distributors** must label, tag or mark containers with the identity of the hazardous chemicals contained in the product and must show hazard warnings to protect the employee. The identity of the hazardous product must correspond to the name listed on the MSDS for that product. The *warning* may be in the form of words, pictures, or symbols, and must be legible and prominently displayed. Any *target organs* affected by the product or chemical must be identified. The name and address of the manufacturer or importer must also be included on the label.

Under the PEOSH HCS, public employers are required to make certain that the chemical products entering their facility are labeled and the labels are not defaced or removed. Generally, the employer receives the product or chemical already labeled by the producer based on OSHA HCS labeling requirements. In addition, public employers must check that the product is labeled according to the New Jersey RTK law. Public employers must comply with the labeling requirements of both PEOSH HCS and the RTK Act. Refer to the PEOSH HCS for specifics on container labeling, N.J.A.C. 12:100-7.6.

Material Safety Data Sheets

Employers must obtain and maintain an MSDS for each product containing hazardous chemicals. The MSDS is an information bulletin that describes in detail: the physical and chemical properties, physical and health hazards, routes of exposure, precautions for safe handling and use, emergency and first aid procedures, and control measures for the hazardous chemical or product. It is prepared by the manufacturer or importer and is provided to the distributor and employers who use the product or chemical.

Under the PEOSH HCS, public employers must obtain an MSDS for each hazardous chemical or product and make them readily accessible to employees in their work area during each workshift. If the RTK Central File provides the required accessibility for employees in their work area, it meets the PEOSH HCS requirement.

If MSDSs are not received with a shipment of products containing hazardous chemicals, the public employer must contact the manufacturer for the missing MSDSs. A sample letter requesting an MSDS is included in the *Public Employer's Guide and Model Written Program for the Hazard Communication Standard*.

Employee Training

Employers must develop an information and training program for those employees who are exposed to hazardous chemicals under normal conditions of use or in a foreseeable emergency. Exposure means the employee comes in contact with the hazardous chemical during their job activities by any route of exposure (e.g., inhalation, skin absorption, or ingestion).

Under the PEOSH HCS, employees must be trained at the time of their initial assignment to work with hazardous chemicals and when a new physical or health hazard is introduced into the workplace. This requirement differs from the RTK training requirement which allowed the employer 30 days to initially train the employee, **Refresher training shall be provided every two years for all employees who continue to be exposed to hazardous chemicals. Refresher training is an abbreviated version of the initial training.** The training must be provided during working hours and at no cost to the employee.

The public employer shall ensure that all employees participate in a training program conducted by a “**technically qualified person.**” A technically qualified person means, for training purposes:

- A person who is a registered nurse, Certified Safety Professional, or Certified Industrial

Hygienist, or a person who has a bachelors degree or higher in industrial hygiene, environmental science, health education, chemistry, or a related field, and understands the health risks associated with exposure to hazardous substances; or

- A person who has completed at least 30 hours of hazardous materials training and understands the health risks associated with exposure to hazardous substances, and has at least one year of experience handling hazardous substances or working with hazardous substances; or
- For teaching the recruit firefighting training course established by the New Jersey Department of Community Affairs (DCA), a person who has fulfilled the requirements of Firefighter Instructor Level I as certified by DCA.

The definition of a “technically qualified person” can be found in the PEOSH HCS, at N.J.A.C. 12:100-7.3.

The PEOSH HCS information and training program must be appropriate in content and vocabulary to the educational level, literacy, and language of the employees in the training session and contain, at a minimum:

1. An explanation of the requirements of the PEOSH Hazard Communication Standard;
2. A description of operations in the work area where hazardous materials are present;
3. The location and availability of the written hazard communication program and other health and safety information (MSDS, HSFS, RTK Survey, and RTK HSL);
4. Details of the facility's hazard communication program;
5. An explanation of the applicable provisions of the RTK Act (RTK Survey, RTK Labeling, HSFS, RTK HSL and Poster);
6. Methods used to identify and recognize hazardous materials in the work area (e.g., labels, MSDS, HSFS);
7. A discussion of the physical and health hazards of the hazardous chemicals;

8. Control measures and specific procedures used to prevent exposure;
9. Standard operating procedures regarding the use, storage, and emergency clean up of hazardous chemicals; and
10. A copy of the RTK brochure.

Additionally, Hazardous Substance Fact Sheets (HSFSs) are required to be made available to employees for chemical specific information, N.J.A.C. 12:100-7.8.

Recordkeeping

Public employees' training records shall be maintained by the employer for the duration of the employee's employment, and shall be made available to the Commissioner of Labor or the Commissioner of Health and Senior Services or their designees for examination and copying.

The training records shall be provided upon request for examination or copying to employees and employee representatives.

Training records shall include:

- Date of the training session;
- Location of the training session;
- Type of training (initial or refresher);
- Name and qualifications of the trainer;
- Names and job titles of the persons attending the training session;
- The content or summary of the training session.

Trade Secrets

Under the PEOSH HCS chemical manufacturers, importers, or employers are allowed to withhold the specific chemical identity of a hazardous chemical from an MSDS if certain conditions are met:

1. The trade secret claim can be supported;
2. The MSDS contains information on the properties and effects of the hazardous chemical;
3. The MSDS indicates that the specific chemical identity is being withheld as a trade secret; and
4. The specific chemical identity is made available to health professionals, employees, and designated representatives under certain specified situations.

In general, a request for the disclosure of a trade secret must be in writing and a statement to maintain the confidentiality of the disclosed information must be included in the request. **The identity of a trade secret chemical must be released in cases of medical emergencies or first aid treatment regardless of the existence of a written statement.** Review the PEOSH HCS for more specific details regarding the trade secret provision. Appendix D of the Standard provides the definition of a trade secret.

Appendices

There are appendices to the PEOSH HCS to assist employers with compliance. Appendices A, B and D are mandatory. Appendix A provides definitions and an explanation of health hazards. Appendix B explains the criteria for evaluating hazards. Appendix D sets forth the definition of a "Trade Secret." Advisory information is provided in Appendix E to assist employers with compliance.

For Additional Information Contact:

New Jersey Department of Health and Senior Services
Public Employees Occupational Safety and Health Program
PO Box 360
Trenton, NJ 08625-0360
(609) 984-1863
<http://www.nj.gov/health/eoh/peoshweb>

New Jersey Department of Labor
Division of Public Safety and Occupational Safety and Health
PO Box 386
Trenton, NJ 08625-0386
(609) 633-2587
<http://www.nj.gov/labor/lsse/lspeosh.html>

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PEOSH Hazard Communication Standard

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